

## Trial Procedure

- A. When your case begins, you will sit at the counsel table facing the magistrate judge. The clerk will show you where to sit. Always address the magistrate judge as “Your Honor” and stand when you are speaking to her. Do not speak to the defendant or his attorney unless the magistrate judge tells you to. You should remain seated at all times unless you are speaking to the magistrate judge.
- B. Presentation of evidence. The plaintiff, having brought the suit, has the burden of proving his case by the greater weight of the evidence and the plaintiff’s evidence is presented first. Evidence may consist of the sworn testimony of a party or other witnesses, and papers, documents, photographs and objects. Ordinarily affidavits (whether notarized or not) or other written statements will not be admitted as evidence. Affidavits or signed statements of someone who testifies live at trial may be used by the side that did not call the witness to show that the witness may be lying. This is called “impeachment of a witness by use of a prior inconsistent statement.”

A witness may be allowed to refer to his own written notes during his testimony if it is necessary to refresh his recollection. If he does so, the other side may inspect the notes and ask questions about them.

- C. Order of examination of a witness. The party calling a witness asks him questions first. This is called direct examination. When he is finished, the other side asks questions on cross-examination. Then the first party gets one more chance to ask further questions on re-direct examination and the last questions are by the other side on re-cross examination. You should prepare in advance of trial an outline of the questions you want to ask your witnesses and perhaps a list of questions to ask the witnesses you expect the other side to call. During the trial, while a witness is being examined by the other side, you may want to take notes so that you can better ask questions when it is your turn to do so.

During this process you should be careful to ask questions and not make statements or argue with the witness.

Leading questions are those which suggest the answer. For example: The traffic light was red, wasn’t it? Non-leading questions usually start with: Who, what, when, where or why. For example: What color was the traffic light? You may ask leading questions on cross or re-cross examination but you should not on direct or re-direct examination.

When the plaintiff has finished presenting his evidence, the defendant may present evidence if he wishes to do so. Remember that after the defendant finishes his examination of each witness the plaintiff may ask questions on cross-examination

and re-cross if there has been a re-direct.

Objections may be made whenever either party believes a question to be improper or other offered evidence to be inadmissible. When an objection is made the witness should not answer the question until the ruling is made. If the objection is SUSTAINED, the witness may not answer. If the objection is OVERRULED, the witness must answer, if he knows the answer.

- D. Arguments or Summation. After both sides finish putting on evidence, each party will be given a chance to give an argument or summation as to what they contend the evidence has shown. The plaintiff has the opening argument, the defendant then argues, and the plaintiff has the last or closing argument. The court may set time limits for the arguments depending on the amount and complexity of the evidence offered.

### Summary

Here are some points to remember:

- A. Always be polite and show respect to the court, the jury and opposing counsel. Rudeness will not help your case.
- B. Do not talk to defendants or defense counsel unless the judge gives you permission.
- C. Decide what you need to prove and how you are going to prove it.
- D. As to each witness you intend to call, make an outline of the questions you need to ask. Also anticipate what witnesses the other side may call and prepare questions to ask them on cross examination.
- E. Ask the court for instructions or explanation if you do not understand something or get confused. Everyone knows that you are not a lawyer and will try to make sure that you understand what is happening.

s/Susan Paradise Baxter  
SUSAN PARADISE BAXTER  
Chief United States Magistrate Judge